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Subject:Activity in Case 3:19-cv-02053-JAG Ithier et al v. Aponte et al Order Adopting Report and Recommendation

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United States District Court

District of Puerto Rico

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Case Name: Ithier et al v. Aponte et al

Case Number: [3:19-cv-02053-JAG](#)

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Docket Text:

ORDER adopting [37] Report and Recommendation; denying [20] Defendant's Motion for Summary Judgment; granting [23] Plaintiff's Motion for Summary Judgment. After considering Defendant's Objection, Docket No. [39], and conducting a *de novo* review of the record, the Court finds that the R&R is supported by both the facts and the law. In his objection, Defendant argues that the Magistrate Judge misconstrued his argument, which is that El Gran Combo as a band is entitled to the royalties as a featured artist and that the band refers to its members, not the owner. In support of this argument, Defendant cites an email from the Senior Corporate Paralegal at Sound Exchange, Docket No. 24-22, and argues that "[w]here Congress has entrusted rulemaking and administrative authority to an agency, courts normally accord the agency particular deference in respect to the interpretation of regulations promulgated under that authority," *S. Shore Hosp., Inc. v. Thompson*, 308 F.3d 91, 97 (1st Cir. 2002) (cleaned up). However, the email is not dispositive because it is not an official interpretation of Sound Exchange, but merely the opinion of an employee. Moreover, the statute does not grant rulemaking authority to an agency, but merely charges "a nonprofit collective designated by the Copyright Royalty

Judges [i.e. Sound Exchange] to distribute receipts from the licensing of transmissions." 17 U.S.C. § 114(g)(2). El Gran Combo, organized as a corporation, is a distinct legal entity that employs the musicians that compose the band. As the group most prominently featured on the sound recordings, the corporation is entitled to collect royalties as the featured artist and Plaintiff is the sole owner of that corporation. Accordingly, the Court ADOPTS the Magistrate Judge's R&R, denies Defendant's Motion for Summary Judgment, and grants Plaintiff's Motion for Summary Judgment. Declaratory Judgment shall be entered accordingly. Signed by Judge Jay A. Garcia-Gregory on 9/30/2022. (MQ)

3:19-cv-02053-JAG Notice has been electronically mailed to:

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